

PATENT
Docket No. 381092000720

#25
DMT
2-11-03

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Assistant Commissioner for Patents, Washington, D.C. 20231, on January 31, 2003.

Tami M. Procopio
Tami M. Procopio

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Terrance P. SNUTCH
and David L. Baillie

Serial No.: 09/346,794

Filing Date: 2 July 1999

For: NOVEL HUMAN CALCIUM
CHANNELS AND RELATED PROBES,
CELL LINES AND METHODS

Examiner: Nirmal Singh Basi

Group Art Unit: 1646

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FEB 10 2003

TECH CENTER 1600/2900

AMENDMENT UNDER 37 C.F.R. § 1.111

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is in response to an Office action herein mailed 31 December 2002, time for response to which was set to expire 31 January 2003. Restriction was required.

Applicants hereby elect, provisionally, to prosecute claims wherein the relevant nucleic acid comprises SEQ. ID. No.: 23. This election is made with traverse.

The rationale for requiring election among groups III-V in the previously issued restriction requirement (4 October 2000) is not relevant in the context of the present claims. The claims to which this restriction requirement was applied were claims to the α_1 subunit encoding DNA *per se*, not to methods to identify compounds that agonize or antagonize such receptors. Therefore, the basis for the restriction requirement is quite different from that imposed herein. The three sequences set forth encode different subtypes of a T-type calcium ion channel and since the claims are drawn to a method to identify a compound which behaves as an agonist (or

antagonist) for a T-type calcium channel, any one of SEQ. ID. No.: 23, 25 and 27 would be satisfactory in the method. Each one of them generates a T-type calcium channel. The method does not change simply because one gene or another encoding, in each case, a T-type channel is used to generate the desired protein.

Further, applicants note that although the election is not to be treated as an election of species, the discussion in the Office action indicates a rejoinder should a generic claim be patentable. Applicants believe these paragraphs, which are appropriate to an election of species, are appropriate to the present situation as well. It is not believed that an undue burden is placed on the Office to examine the present claims that include all alternative subtypes of T-type channels. There are only three of these. As the Office is mandating reference to actual structures, there does not appear to be a way to formulate a generic claim that would include all of the α_{1G} , α_{1H} , and α_{1I} subunits in a single sequence designation.

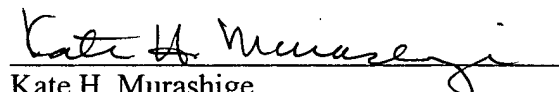
Accordingly, applicants again provisionally elect the claims as they read on generation of the T-type channel from SEQ. ID. No.: 23 but request, respectfully, reconsideration of the restriction.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 381092000720.

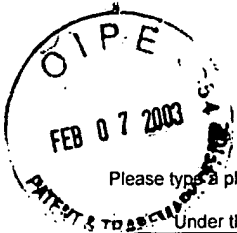
Respectfully submitted,

Dated: January 31, 2003

By:


Kate H. Murashige
Registration No. 29,959

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1646

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/346,794
Filing Date	2 July 1999
First Named Inventor	Terrance P. SNUTCH and David L. BAILLIE
Group Art Unit	1646
Examiner Name	N. S. Basi
Attorney Docket No.	381092000720

Total Number Of Pages In This Submission

3

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declarations	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Return Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/>
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/>
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

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SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual Name	Kate H. Murashige, Reg No. 29,959 Morrison & Foerster LLP 3811 Valley Centre Drive, Suite 500, San Diego, California 92130
Signature	
Date	January 31, 2003

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Tami M. Procopio

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